

McNULTY LAW FIRM
Peter J. McNulty, Esq. SBN 89660
Brett L. Rosenthal, Esq. SBN 230154
827 Moraga Drive
Los Angeles, CA 90049
Telephone: 310.471.2707
Facsimile: 310.472.7014

Attorneys for Plaintiff Erin Wright,
Individually and as Class Representative
of and for all those similarly situated

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ERIN WRIGHT, individually and as Class
Representative of and for all those similarly
situated,

Plaintiff,

vs.

GENERAL MILLS, INC., and DOES 1
through 100;

Defendants.

CASE NO. 08CV1532-L-LSP

Assigned to the Honorable M. James Lorenz

FIRST AMENDED CLASS ACTION
COMPLAINT FOR VIOLATIONS OF:

1. CALIFORNIA BUSINESS AND
PROFESSIONS CODE §§ 17200, *et*
seq.,
2. CALIFORNIA BUSINESS AND
PROFESSIONS CODE §§ 17500, *et*
seq., and
3. THE CONSUMERS LEGAL
REMEDIES ACT ("CLRA") CIVIL
CODE §§ 1750, *et seq.*

Request for a Jury Trial of all Issues Triable by
a Jury

COMPLAINT

COMES NOW the Plaintiff, Erin Wright, on behalf of herself and all other similarly situated individuals residing within the boundaries of the State of California, by and through the undersigned counsel of record, and hereby brings this Class Action Complaint against Defendant, GENERAL MILLS, INC. (hereinafter "GENERAL MILLS" or the "Defendant").

///

///

I. NATURE OF ACTION

1
2 1. This is a class action pursuant to California's Unfair Competition Law, Business and
3 Professions Code §§ 17200 *et seq.* ("UCL"), California's False Advertising Law Business and
4 Professions Code §§ 17500, *et seq.* ("FAL") and The Consumers Legal Remedies Act Civil Code §
5 1750, *et seq.* ("CLRA"), against Defendant GENERAL MILLS for its marketing, advertising,
6 promotion and sales of "Nature Valley" crunchy granola bar products and "Nature Valley" chewy-
7 trail-mix bar products as "100% Natural" when these products contain one or more non-natural or
8 artificial ingredient, such as High Fructose Corn Syrup ("HFCS").

9
10 2. The term "100% Natural" and similar terms are regularly used by manufacturers, such as the
11 Defendant, to describe a product that does not have any chemically altered or man-made ingredients.
12 These terms are used to convey the message that the product at issue is a healthier choice than
13 competing products that contain processed ingredients, and that this product is superior and is even
14 worth a premium price because of that benefit.

15
16 3. However, HFCS is a highly processed sugar substitute that does not exist in nature and is not
17 "100% Natural." The use by GENERAL MILLS of the term "100% Natural" to describe its "Nature
18 Valley" crunchy granola bar products and its "Nature Valley" chewy-trail-mix bar products when, in
19 fact, the products are not, is unfairly misleading, inaccurate, deceptive and unlawful.

20
21 4. Defendant's actions in describing these products as "100% Natural" was designed to induce
22 consumers, such as the Plaintiff and the members of the putative Class, into believing that the
23 product being described does not contain chemically altered or man-made ingredients and, therefore,
24 that the product is a more healthy choice than competing products.

25 5. As a direct result of its misleading, deceptive, untrue advertising and its unlawful, unfair and
26 fraudulent business practices related to the "100% Natural" products listed above, Defendant caused
27
28

1 Plaintiff and other members of the Class to purchase, purchase more of, or pay more for, these
2 Nature Valley products.

3 6. Plaintiff and the members of the putative Class would have made different purchasing
4 decisions had they known that the Defendant's "100% Natural" products contained one or more non-
5 natural or artificial ingredient(s), such as High Fructose Corn Syrup, which has in turn caused
6 Plaintiff and the Class to incur millions of dollars in losses.
7

8 7. Common sense dictates that the use of the term "100% natural" should be limited to those
9 products that contain NO artificial and/or synthetic ingredients and/or consist entirely of ingredients
10 that are only minimally processed, at best.

11 8. However, GENERAL MILLS has and continues to deceptively use the term "100% Natural"
12 to describe its "Nature Valley" crunchy granola bar products and its "Nature Valley" chewy-trail-mix
13 bar products when they actually contain ingredients that have been chemically altered from their
14 natural state and, therefore, cannot be considered "100% Natural".
15

16 9. Thus, use by GENERAL MILLS of the term "100% Natural" to describe its "Nature Valley"
17 crunchy granola bar products and its "Nature Valley" chewy-trail-mix bar products creates consumer
18 confusion, is deceptive, and detrimentally effects competing products that are "100% Natural" (i.e.,
19 naturally produced or contain ONLY ingredients that are chemically unchanged from their natural
20 state).
21

22 **II. PARTIES**

23 10. Plaintiff is over the age of nineteen (19) years of age. Plaintiff is filing this claim on behalf
24 of herself and all residents throughout the State of California who purchased a GENERAL MILLS
25 "Nature Valley" crunchy granola bar products and its "Nature Valley" chewy-trail-mix bar products
26 within the "Class Period" as defined herein, that was marketed, advertised, promoted, and/or sold as
27
28

1 “100% Natural” but which contain one or more non-natural or artificial ingredient(s), such as High
2 Fructose Corn Syrup.

3 11. Specifically excluded from the class is any entity in which Defendant GENERAL MILLS has
4 a controlling interest, and any and all officers, directors, employees, affiliates, subsidiaries, legal
5 representatives, heirs, successors, and/or assigns of any such entity, together with any immediate
6 family member of any officer, director or employee of said companies.
7

8 12. Also excluded from the Class is any Judge or Magistrate presiding over this Action and
9 members of their immediate families, and any counsel for any Defendant, counsel’s staff, and/or
10 immediate families.

11 13. Defendant General Mills, Inc., (“GENERAL MILLS”) is a Delaware corporation/company
12 with its principal place of business located in Minneapolis, Minnesota. GENERAL MILLS
13 develops, manufactures, promotes, distributes, and sells packaged “Nature Valley” crunchy granola
14 bar products and “Nature Valley” chewy-trail-mix bar products throughout the State of California.
15 Defendant GENERAL MILLS representative for service of process in the State of California is as
16 follows:
17

18 NATIONAL REGISTERED AGENTS, IN C.
19 2030 MAIN STREET SUITE 1030
20 IRVINE, CA 92614

21 14. The true names and capacities, whether individual, corporate, associate, or otherwise, of the
22 Defendants designated herein as DOES 1 through 100, inclusive, are presently unknown to Plaintiff,
23 who, therefore, sue said Defendants by such fictitious names. Plaintiffs are informed and believe,
24 and thereupon allege, that each of the Defendants designated herein as a “Doe” is legally responsible
25 for the events and happenings hereinafter referred to, and proximately caused or contributed to the
26 injuries and damages as hereinafter described. Based upon information and belief, DOES 1 through
27 100 are any other companies who manufactured, sold, marketed and/or advertised for sale the
28

1 “Nature Valley” crunchy granola bar products and “Nature Valley” chewy-trail-mix bar products
2 throughout the State of California to the class as hereinafter described. Plaintiffs will seek leave of
3 the Court to amend this complaint, in order to show the true names and capacities of such parties,
4 when each has been ascertained.

5
6 15. At all times herein mentioned, each of the Defendants was the agent, partner, joint venture
7 and/or employee of the remaining Defendants, and was acting within the course and scope of such
8 agency, partnership, joint venture, and/or employment. Furthermore, in engaging in the conduct
9 described below, the Defendants were all acting with the knowledge, consent, approval, and/or
10 ratification of their co-Defendants.

11 12 **III. JURISDICTION AND VENUE**

13 16. Jurisdiction and venue are proper in this Court.

14 17. Plaintiff is a resident citizen of the State of California, is a resident citizen of this Judicial
15 Circuit, and the acts, events, and conduct complained of herein occurred in substantial part within
16 this Judicial District. Defendant has substantial operations and/or does significant business within
17 this Judicial District and is, therefore, subject to personal jurisdiction in this Judicial District.

18
19 18. Plaintiff is a “consumer” and a “real party in interest” as required to bring this action and as
20 set out in Civil Code § 1780(a). Moreover, Plaintiff suffered damage and injury as a result of
21 Defendant conduct as alleged above.

22 19. Plaintiff and the members of the putative Class respectfully represent that they have injuries
23 suffered damages common to all of those similarly situated, and they specifically disclaim any
24 cause of action based in any way upon federal law, whether pursuant to federal statute, federal
25 common law, or the Constitution of the United States of America, basing their causes of action
26 solely and exclusively upon statutes and the common law of the State of California.
27

28 ///

IV. FACTS

20. This Class Action seeks redress for GENERAL MILLS deliberate and unlawful misbranding of “Nature Valley” crunchy granola bar products and “Nature Valley” chewy-trail-mix bar products as being “100% Natural” when, in fact, the product(s) contain at least one (1) non-natural ingredient.

21. GENERAL MILLS is in the business of producing and marketing food and beverage products to the general public throughout the United States including the State of California.

22. Upon information and belief, GENERAL MILLS entered the crunchy granola bar market in 1975. Ultimately, GENERAL MILLS developed and began marketing “100% Natural” “Nature Valley” crunchy granola bar products and “Nature Valley” chewy-trail-mix bar products.

23. The label on each box of “Nature Valley” crunchy granola bar products and “Nature Valley” chewy-trail-mix bar products prominently displays the words “100% Natural”.

24. GENERAL MILLS has marketed these products on its website, www.generalmills.com, as “a 100 percent natural source of energy to fuel consumers’ healthy, active lifestyles.”

25. GENERAL MILLS website has further described its “Nature Valley” crunchy granola bar products as follows:

... “made with pure and simple ingredients. When you want a natural snack for your healthy, active outdoor lifestyle, reach for the great taste and whole-grain goodness of Nature Valley crunchy granola bars.”

26. Similarly, GENERAL MILLS website describes its “Nature Valley” chewy-trail-mix products as follows:

... “Nature Valley Chewy Trail Mix Crunchy granola bars are one thing you don’t want to leave behind. They ... are made from 100% natural ingredients ... “

27. However, these products are not “100% natural” because they contain a highly processed sugar substitute known as High Fructose Corn Syrup (hereinafter “HFCS”).

28. HFCS does not exist in nature and is a man-made sweetener.

29. Therefore, to describe, label, advertise, and promote HCFS as a “Natural,” “All Natural” or “100% Natural” ingredient is deceptive and unfair to consumers and competitors.

30. HFCS is created from cornstarch, as opposed to sugar (sucrose), which is produced from sugar cane or sugar beets. HFCS is produced by processing cornstarch to yield glucose, and then processing a significant portion of the glucose to produce fructose. Acids or enzymes are needed to break down cornstarch, which is composed of long chains of glucose molecules, into glucose and then, partially into fructose.

31. First, the cornstarch is treated with an enzyme, alpha-amylase, to produce shorter chains of sugars called polysaccharides. Alpha-amylase is industrially produced by a bacterium, usually *Bacillus* sp. The enzyme is purified and then shipped to HFCS manufacturers.

32. Second, an enzyme called glucoamylase breaks the sugar chains down even further to yield glucose. Unlike alpha-amylase, glucoamylase is produced industrially by *Aspergillus*, a fungus. (Acids may be used by some companies instead of alpha-amylase and glycoamylase)

33. The third enzyme, glucose-isomerase, converts glucose to a mixture of about forty-two percent (42%) fructose and fifty to fifty-two percent (50% to 52%) glucose, with some other sugars (or short polymers of glucose) mixed in. While alpha amylase and glucoamylase are added directly to the slurry, pricey glucose-isomerase is packed into columns and the sugar mixture is then passed over it. The sweet liquid with forty-two percent (42%) fructose is used as HFCS 42 in some applications.

34. If the end user wants a higher percentage of fructose in its HFCS, two additional steps are necessary. First, a liquid chromatography step takes the mixture to ninety-percent (90%) fructose. Second, the ninety-percent (90%) mixture is back-blended with the original mixture to yield a final concentration of about fifty-five (55%) fructose. This mixture is what the industry commonly refers to as HFCS 55, and is the industry standard.

1 35. Isomerization to create HFCS generally takes place in large, backed-bed reactors. These
2 are cylindrical columns designed to give good flow distribution and flow control. Isomerization of
3 dextrose to fructose is a thermodynamically controlled reaction.

4 36. The process described herein above does NOT otherwise occur in nature. Indeed, the
5 process used to create HFCS has only been in existence for the last 50 years.

6 37. Furthermore, the molecules in HFCS, and in the Defendant' "100% Natural" "Nature
7 Valley" crunchy granola bar products and "Nature Valley" chewy-trail-mix bar products were not
8 extracted from natural sources, but created through enzymatically catalyzed chemical reactions in
9 factories.
10

11 38. Once the complicated process for creating HFCS is understood, it is clear why describing
12 products that contain HFCS as "100% Natural" is misleading and deceptive.

13 39. HFCS is a man-made product and its use in the Defendant' "100% Natural" "Nature
14 Valley" crunchy granola bar products and "Nature Valley" chewy-trail-mix bar products is
15 misleading to the general public, consumers of the products, and the present Plaintiff.
16

17 40. GENERAL MILLS is telling the general, consuming public of the State of California that
18 "100% Natural" "Nature Valley" crunchy granola bar products and "Nature Valley" chewy-trail-
19 mix bar products are "100% natural" when they are not.
20

21 41. This action does not challenge GENERAL MILLS' use of HFCS in its products, nor does
22 this action allege that HFCS has any adverse health effects. This action only challenges use of the
23 phrase "100% natural" to describe, promote, market, and sell products that contain the non-natural,
24 man-made, synthetic sugar substitute, HFCS.

25 42. GENERAL MILLS produces, markets, promotes, and sells "Nature Valley" crunchy granola
26 bar products and "Nature Valley" chewy-trail-mix bar products that are deceptively labeled as
27 "100% natural" but contain HFCS. GERERAL MILLS does not mention that these products contain
28

1 HFCS except in hard-to-read type in the “ingredients” statement on the reverse/rear side of the
2 product container. This is despite the fact that HFCS is a primary ingredient in each such product.

3 43. GENERAL MILLS is intentionally and purposely manipulating the labeling of certain of its
4 products in violation of the law and with the specific intent of misrepresenting said “Nature Valley”
5 crunchy granola bar products and “Nature Valley” chewy-trail-mix bar products are “100% Natural”
6 when they are clearly not. Such conduct is in direct violation of California consumer protection laws
7 in that such conduct constitutes a deceptive and unfair trade practice.

8 44. Plaintiff purchased GENERAL MILLS “Nature Valley” crunchy granola bar products and
9 “Nature Valley” chewy-trail-mix bar products expecting a healthy food product. Plaintiff was
10 attracted to GENERAL MILLS’ products because the label indicated that the “Nature Valley”
11 crunchy granola bar products and its “Nature Valley” chewy-trail-mix bar products were made from
12 “100% natural” ingredients.

13 45. Plaintiff reasonably believed that “100% natural” labeled products contain ingredients found
14 in nature or, at least, ingredients minimally processed from things found in nature. Plaintiff does not
15 consider HFCS to be a “natural” ingredient.

16 46. Plaintiff relied on the “100% Natural” ingredient representation to his detriment. Only after
17 Plaintiff purchased and consumed the products did he learn that the products actually contained
18 HFCS, an artificial ingredient.

19 47. Plaintiff and the members of the putative Class would have made different purchasing
20 decisions had they known that the Defendant’s “100% Natural” products contained one or more non-
21 natural or artificial ingredient(s), such as High Fructose Corn Syrup, which has in turn caused
22 Plaintiff and the Class to incur millions of dollars in losses.

23 48. Plaintiff bargained for and paid for a “100% Natural” product, but instead received a product
24 with a non-natural, man-made, artificial ingredient, HFCS, which had no value or benefit to him.
25
26
27
28

V. CLASS ACTION ALLEGATIONS

49. Plaintiff brings this action as a class action pursuant to California Civil Code §1780, *et seq.*, on his own behalf, and on the behalf of all others similarly situated, with the Class being defined as follows:

All persons residing in the State of California who purchased GENERAL MILLS, INC., "Nature Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products marketed, advertised, promoted, labeled and sold as "100% Natural," but that contained HFCS and/or other unnatural ingredients, during the "Class Period"

50. Specifically excluded from the Class is any entity in which GENERAL MILLS, INC., has a controlling interest, and any and all officers, directors, employees, affiliates, subsidiaries, legal representatives, heirs, successors, and/or assigns of any such entity, together with any immediate family member of any officer, director or employee of said companies.

51. Also excluded from the Class is any Judge or Magistrate presiding over this Action and members of their immediate families, and any counsel for any Defendant, counsel's staff, and/or immediate families.

52. The "Class Period" is defined as being the four (4) years immediately preceding the filing of this action.

53. A class action is maintainable under California Rules of Civil Procedure, because Defendant has acted and refused to act on grounds generally applicable to the Class, thereby making final injunctive relief and declaratory relief appropriate with respect to the Class as a whole.

54. Alternatively, a class action is maintainable under California Civil Code Section 1780, *et seq.* because common questions predominate over any questions affecting individual members of the Class, and litigation as a class action is superior to other available methods for the fair and efficient adjudication of this controversy for the following reasons:

1 55. While the exact number of Class members for each respective Class is presently unknown to
2 the Plaintiff, and can only be ascertained through appropriate discovery, Plaintiff believes the
3 members of the Class readily exceeds over one thousand (1,000) persons.

4 56. The claims of the Plaintiff and the Class raise questions of law and fact that are common to
5 all members and which predominate over any questions solely affecting individual members of the
6 Class. Among questions of law and fact common to the Class:
7

- 8 a. Whether Defendant misrepresents the ingredients, characteristics or other aspects of
9 its "Nature Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix
10 bar products;
- 11 b. Whether Defendant mislabels its "Nature Valley" crunchy granola bar products or
12 "Nature Valley" chewy-trail-mix bar products;
- 13 c. Whether Defendant's misrepresentations are unfair, deceptive, untrue, or misleading
14 advertising as defined under California Business and Professions Code § 17500 et
15 seq.;
- 16 d. Whether Defendant's mislabeling of its "Nature Valley" crunchy granola bar products
17 or "Nature Valley" chewy-trail-mix bar products constitutes unfair, deceptive, untrue,
18 or misleading advertising as defined under California Business and Professions Code
19 § 17500 et seq.;
- 20 e. Whether Defendant's mislabeling of its "Nature Valley" crunchy granola bar products
21 or "Nature Valley" chewy-trail-mix bar products is unlawful, unfair or fraudulent
22 under California Business and Professions Code § 17200, et seq.;
- 23 f. Whether Defendant's misrepresentations are unlawful, unfair or fraudulent under
24 California Business and Professions Code § 17200, et seq.;
- 25
26
27
28

- 1 g. Whether Defendant knew, or by the exercise of reasonable care should have known,
2 that its misrepresentations and mislabeling of the “Nature Valley” crunchy granola
3 bar products or “Nature Valley” chewy-trail-mix bar products was untrue or would
4 be misleading to a reasonable consumer;
5
6 h. Whether Defendant knowingly and intentionally concealed from Plaintiff and the
7 members of the Class that its “Nature Valley” crunchy granola bar products or
8 “Nature Valley” chewy-trail-mix bar products were mislabeled and that the
9 ingredients were misrepresented;
10
11 i. Whether Defendant engaged in unfair and deceptive conduct in a violation of
12 California Civil Code section 1750, et seq.
13
14 j. Whether Defendant engaged in unfair and deceptive conduct in a violation of
15 California Civil Code section 1770(a)(5) which prohibits: “Representing that goods
16 or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or
17 quantities which they do not have or that a person has a sponsorship, approval,
18 status, affiliation, or connection which he or she does not have.”
19
20 k. Whether Defendant engaged in unfair and deceptive conduct in violation of
21 California Civil Code section 1770(a)(7) which prohibits: “Representing that goods
22 or services are of a particular standard, quality, or grade, or that goods are of a
23 particular style or model, if they are of another.”
24
25 l. Whether Plaintiff and the members of the proposed Class have been injured or
26 suffered losses and, if so, the extent of their injury or loss;
27
28 m. Whether Defendant should be enjoined from engaging in the conduct complained of
 herein; and,

n. Whether Defendant has been unjustly enriched through the wrongful conduct set forth herein.

57. Plaintiff's claims as representative of the Class are typical of the claims of the absent class members. Plaintiff will fairly and adequately protect the interests of the Class, and has retained attorneys experienced in class and complex litigation as her counsel.

58. The prosecution of individual actions by members of the Class would create the risk of: (1) inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendant; and (2) adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

58. Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the advertising, marketing and labeling of Defendant's "Nature Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products.

59. Plaintiff avers that the prerequisites for class action treatment apply to this action and that questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversies which are the subject of this action.

60. Plaintiff further states that the interests of judicial economy will be served by concentrating litigation concerning these claims in this Court, and that the management of the proposed Class will not be difficult.

VI. FIRST CAUSE OF ACTION

(Business and Professions Code § 17500, *et seq.* - Misleading and Deceptive Advertising)

61. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

62. Plaintiff asserts this cause of action for violations of California Business and Professions Code §17500, *et seq.* for misleading and deceptive advertising against Defendant.

63. At all material times, Defendant has engaged in a scheme of offering for sale “Nature Valley” crunchy granola bar products or “Nature Valley” chewy-trail-mix bar products to Plaintiff and other members of the Class, by way of, *inter alia*, the World Wide Web (Internet), product packaging and labeling, commercial advertisements, and other promotional materials. The “Nature Valley” crunchy granola bar products or “Nature Valley” chewy-trail-mix bar products actually contain HFCS, an artificial and manmade ingredient.

64. Said labeling and other inducements were made within the State of California and come within the definition of advertising as contained in Business and Professions Code §17500, *et seq.* in that such promotional materials and product labeling are intended as inducements to purchase the products and are statements disseminated by Defendant to Plaintiff and the members of the Class and are intended to reach these consumers.

66. Defendant knew, or in the exercise of reasonable care should have known, that these statements would be misleading and deceptive to the reasonable consumer.

67. In furtherance of said plan and scheme, Defendant has manufactured and distributed within the State of California via the World Wide Web (Internet), product packaging and labeling, commercial advertisements and other promotional materials, statements that falsely advertise the true nature of their “Nature Valley” crunchy granola bar products or “Nature Valley” chewy-trail-mix bar products as being “100% Natural.”

68. The “Nature Valley” crunchy granola bar products or “Nature Valley” chewy-trail-mix bar products contain an artificial man-made sweetener, HFCS.

69. Consumers, including Plaintiff and the members of the Class necessarily and reasonably relied on the label and other marketing materials for these products.

70. Consumers, including Plaintiff and the members of the Class were among the intended targets of these representations and statements.

71. The above acts of Defendant, in disseminating said misleading and deceptive representations and statements throughout the State of California to consumers, including Plaintiff

1 and members of the Class, were and are likely to deceive reasonable consumers, including Plaintiff
2 and other members of the Class by obfuscating the nature of the ingredients of the "Nature Valley"
3 crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products, all in violation of
4 the "misleading prong" of California Business and Professions Code § 17500, *et seq.*

5 72. As a result of the above violations of the misleading prong of Business and Professions
6 Code § 17500, *et seq.*, Defendant has been unjustly enriched at the expense of Plaintiff and the
7 other members of the Class.

8 73. Plaintiff and the members of the Class, pursuant to Business and Professions Code § 17535,
9 are entitled to an order of this Court enjoining such future wrongful conduct on the part of
10 Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's
11 ill-gotten gains and restore to any person in interest any money paid for the "100% Natural"
12 "Nature Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products as
13 a result of the wrongful conduct of Defendant.

14 74. WHEREFORE, Plaintiff prays for relief, for herself and for the members of the Class, as set
15 forth below.

16 VII. SECOND CAUSE OF ACTION

17 (Business and Professions Code § 17500, *et seq.* - Untrue Advertising)

18 75. Plaintiff repeats each and every allegation contained in the paragraphs above and
19 incorporates such allegations by reference therein.

20 76. Plaintiff asserts this cause of action for violations of California Business and Professions
21 Code § 17500, *et seq.* for untrue advertising against Defendant.

22 77. At all material times, Defendant has engaged in a scheme of offering for sale "Nature
23 Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products to Plaintiff
24 and the other members of the Class, by way of, *inter alia*, the World Wide Web (Internet), product
25 packaging and labeling, commercial advertisements and other promotional materials.

26 78. The "Nature Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar
27 products contain an artificial man-made sweetener, HFCS.
28

1 79. Consumers, including Plaintiff and the members of the Class, necessarily and reasonably
2 relied on the label and other marketing materials for these products.

3 80. Consumers, including Plaintiff and the members of the Class, were among the intended
4 targets of these representations and statements.

5 81. The above acts of Defendant, in disseminating said misleading and deceptive
6 representations and statements throughout the State of California to consumers, including Plaintiff
7 and members of the Class, were and are likely to deceive reasonable consumers, including Plaintiff
8 and other members of the Class by obfuscating the nature of the ingredients of the "Nature Valley"
9 crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products, all in violation of
10 the "untrue" prong of California Business and Professions Code §17500, *et seq.*

11 82. Plaintiff and the members of the Class, pursuant to Business and Professions Code § 17535,
12 are entitled to an order of this Court enjoining such future wrongful conduct on the part of
13 Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's
14 ill-gotten gains and restore to any person in interest any money paid for the "100% Natural"
15 "Nature Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products as
16 a result of the wrongful conduct of Defendant.

17 83. WHEREFORE, Plaintiff prays for relief, for herself and for the members of the Class, as set
18 forth below.

19 **VIII. THIRD CAUSE OF ACTION**

20 (Business and Professions Code § 17200, *et seq.* - Unlawful Business Acts and Practices)

21 84. Plaintiff repeats each and every allegation contained in the paragraphs above and
22 incorporates such allegations by reference herein.

23 85. Such acts of Defendant, as described above, and each of them, constitute unlawful business
24 acts and practices.

25 86. In this regard, manufacturing, marketing, advertising, selling and distributing the "Nature
26 Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products as "100%
27 Natural" when, in fact, they contain HFCS, is unlawful.
28

87. The business practices alleged above are unlawful under the Consumers Legal Remedy Act, Cal. Civ. Code §1750, *et seq.* ("CLRA"), which also forbids deceptive advertising, among other things.

88. The business practices alleged above are unlawful under Business and Professions Code §17200, *et seq.* by virtue of violating Business and Professions Code §17500, *et seq.*, which forbids untrue advertising and misleading advertising.

89. The business practices alleged above are also unlawful as a breach of an express warranty under California Commercial Code § 2313; and, breach of implied warranty of fitness for a particular purpose under California Commercial Code § 2315.

90. As a result of the wrongful business practices described above, Plaintiff and the members of the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future wrongful conduct on the part of Defendant and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to any person in interest any money paid for the "100% Natural" "Nature Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products as a result of the wrongful conduct of Defendant.

91. The above-described unlawful business acts and practices of Defendant present a reasonable likelihood of deception to Plaintiff and members of the Class in that Defendant has systematically perpetrated and continues to perpetrate such acts or practices upon members of the Class by means of misleading advertising and marketing.

92. WHEREFORE, Plaintiff prays for relief, for herself and for the members of the Class, as set forth below.

IX. FOURTH CAUSE OF ACTION

(Business and Professions Code § 17200, *et seq.* - Unfair Business Acts and Practices)

93. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

94. Such acts of Defendant, as described above, and each of them, constitute unfair business acts and practices.

1 95. Plaintiff, and other members of the Class who purchased any of the "100% Natural"
2 "Nature Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products
3 suffered a substantial injury by virtue of buying a product they would not have purchased absent
4 Defendant's unfair advertising, by virtue of buying more of these products they would have absent
5 Defendant's unfair advertising, or by paying more for these products than they would have absent
6 the Defendant's unfair advertising.

7 96. There is no benefit to consumers or competition by falsely advertising these products.
8 Indeed, the harm to consumers and competition is substantial.

9 97. Plaintiff and other members of the Class who purchased any of the "100% Natural" "Nature
10 Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products had no way
11 of reasonably knowing that Defendant's products were not "100% Natural", as labeled and
12 otherwise advertised.

13 98. Thus, these consumers could not have reasonably avoided the injury each of them suffered.

14 99. The gravity of the consequences of Defendant's conduct as described above outweighs any
15 justification, motive or reason therefore, particularly considering the available legal alternatives
16 which exist in the marketplace, and is immoral, unethical, unscrupulous, offends established public
17 policy or is substantially injurious to Plaintiff and other members of the Class.

18 100. As a result of the business acts and practices described above, Plaintiff and the members of
19 the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining
20 such future wrongful conduct on the part of Defendant, and such other orders and judgments which
21 may be necessary to disgorge Defendant's ill-gotten gains and to restore to any person in interest
22 any money paid for the "100% Natural" "Nature Valley" crunchy granola bar products or "Nature
23 Valley" chewy-trail-mix bar products as a result of the wrongful conduct of Defendant.

24 101. WHEREFORE, Plaintiff prays for relief, for herself and for the members of the Class, as set
25 forth below.

26 ///

27 ///

28 ///

X. FIFTH CAUSE OF ACTION

(Business and Professions Code § 17200, *et seq.* - Fraudulent Business Acts and Practices)

102. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

103. Such acts of Defendant as described above, and each of them, constitute fraudulent business practices under California Business and Professions Code sections § 17200, *et seq.*

104. As more fully described above, the labeling of the “Nature Valley” crunchy granola bar products or “Nature Valley” chewy-trail-mix bar products is likely to deceive reasonable California purchasers, such as the Plaintiff and the members of the Class.

105. Indeed, Plaintiff and other members of the Class were unquestionably deceived into believing the products they purchased were “100% Natural”, when in fact, they contained an artificial ingredient, HFCS.

106. Said acts are fraudulent business acts and practices.

107. This fraud and deception caused Plaintiff and members of the Class to purchase “Nature Valley” crunchy granola bar products or “Nature Valley” chewy-trail-mix bar products and Plaintiff and the members of the Class suffered a substantial injury by virtue of buying a product they would not have purchased absent Defendant’s unfair advertising, by virtue of buying more of these products they would have absent Defendant’s unfair advertising, or by paying more for these products than they would have absent the Defendant’s unfair advertising.

108. As a result of the business acts and practices described above, Plaintiff and the members of the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future wrongful conduct on the part of Defendant, and such other orders and judgments which may be necessary to disgorge Defendant’s ill-gotten gains and to restore to any person in interest any money paid for the “Nature Valley” crunchy granola bar products or “Nature Valley” chewy-trail-mix bar products at issue as a result of the wrongful conduct of Defendant.

109. WHEREFORE, Plaintiff prays for relief, for herself and for the members of the Class, as set forth below.

///

XI. SIXTH CAUSE OF ACTION

(California Civil Code § 1750, *et seq.* - The Consumers Legal Remedies Act)

110. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

111. Plaintiff brings this action pursuant to California's Consumer Legal Remedies Act ("CLRA") California Civil Code § 1750, *et seq.*

112. The CLRA provides that "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful."

113. By this action, Plaintiff seeks to enjoin the unfair, unlawful, and deceptive acts and conduct of the Defendant as more fully described above. Plaintiff also seeks to recover damages as set forth herein.

114. The "Nature Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products at issue are "goods" as defined by the CLRA in California Civil Code § 1761(a).

115. Defendant is a "person" as defined by the CLRA in California Civil Code § 1761(c).

116. Plaintiff and the members of the Class are "consumers" as defined by the CLRA in California Civil Code § 1761(d).

117. The buying of the "Nature Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products by Plaintiff and the members of the Class are "transactions" as defined by California Civil Code § 1761(e).

118. The mislabeling of the "Nature Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products is prohibited pursuant to the CLRA, since they are "undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer."

119. Defendant engaged in unfair and deceptive acts declared unlawful by the CLRA by knowingly and intentionally mislabeling the "Nature Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products as "100% Natural" when in fact these products contain HFCS, an artificial ingredient that does not naturally occur.

1 120. This unfair and deceptive conduct is a violation of California Civil Code § 1770(a)(5),
2 which prohibits “Representing that goods or services have sponsorship, approval, characteristics,
3 ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship,
4 approval, status, affiliation, or connection which he or she does not have.”

5 121. This unfair and deceptive conduct is also a violation of California Civil Code § 1770(a)(7)
6 which prohibits: “Representing that goods or services are of a particular standard, quality, or
7 grade, or that goods are of a particular style or model, if they are of another.”

8 122. The Defendant’s unfair and deceptive acts and conduct have violated, and continue to
9 violate, California’s Consumers Legal Remedies Act, Civil Code § 1750, *et seq.*, because they
10 extend to transactions that are intended to result, or have resulted, in the sale or lease of goods or
11 services to consumers, including the Plaintiff and the members of the Class.

12 123. As a direct and proximate cause of Defendant’s unfair and deceptive acts or practices,
13 Plaintiff and the members of the Class have suffered damages in that they purchased misbranded
14 products they would not have bought, purchased more of these products than they would otherwise
15 have bought, or that they paid more for these products than they would have if these products had
16 been honestly advertised and labeled.

17 124. In addition, on August 19, 2008, Plaintiff served the Defendant, by certified mail return
18 receipt requested, with notice and demand to correct, repair, replace or otherwise rectify the
19 unlawful, unfair, false and deceptive practices complained of herein, as required by the CLRA in
20 California Civil Code § 1782.

21 125. As Defendant failed to comply with Plaintiff’s demand within thirty (30) days of the
22 August 19, 2008 notice and demand letter, Plaintiff seeks the following relief, for herself and for
23 the Class, as allowed under California Civil Code § 1780:

- 24 a. Actual damages of not less than One Thousand Dollars (\$1,000).
- 25 b. injunctive and declarative relief.
- 26 c. Restitution.
- 27 d. Punitive damages.
- 28 e. Costs of the action,

- f. Reasonable attorneys' fees, pursuant to California Civil Code § 1780(d).
- g. Any other relief which the Court deems proper.

XII. RELIEF DEMANDED

126. For herself, and for the Class she seeks to represent, Plaintiff asks for the following relief:

- A. An Order certifying that the action may be maintained as a class action;
- B. An Order that the Plaintiff may serve as representative of the Class;
- C. For a preliminary and permanent injunction enjoining Defendant from advertising, representing, or otherwise holding out for sale within the State of California, any products which contain HFCS as being "100% Natural";
- D. An Order requiring Defendant to provide a form of corrective advertising designed to correct the misrepresentations, misstatements and omissions made in the marketing, advertising, packaging and other promotional materials related to its "100% Natural" "Nature Valley" crunchy granola bar products or "Nature Valley" chewy-trail-mix bar products;
- E. For a judgment of the Court to restore, by way of restitution, refund or reimbursement, to any person in interest, any money acquired by means of Defendant's untrue, deceptive or misleading advertising and/or unfair, unlawful or fraudulent business acts and practices described herein;
- F. Disgorgement of the excessive and ill-gotten monies obtained by Defendant as a result of the untrue and misleading advertising and unlawful, unfair or fraudulent business acts and practices described herein;
- G. For an award of attorney fees pursuant to, *inter alia*, Code of Civil Procedure §§ 1021.5 and 1032;
- H. For an award of attorney fees pursuant to California Civil Code § 1780(d);
- I. For costs of suit herein incurred pursuant to Code of Civil Procedure § 1033.5;
- J. Pre and post-judgment interest; and/or

///

///

///

1 K. For such other and further relief as this Court deems appropriate or which is allowed for in
2 law or equity.

3
4 Dated: November 18, 2008

McNULTY LAW FIRM

5
6 By: /s/ Brett L. Rosenthal

Peter J. McNulty (89660)

7 Brett L. Rosenthal (230154)

8 Attorneys for Plaintiff and the Class

9 **ADDITIONAL PLAINTIFF'S COUNSEL**

10 **ANGWIN LAW FIRM**

11 Edward E. Angwin (*pro hac* to be filed)
12 2229 First Avenue North
Birmingham, Alabama 35203
205.241.9608

13 **JACKSON & TUCKER PC**

14 K. Steven Jackson (*pro hac* to be filed)
15 Joseph L. Tucker (*pro hac* to be filed)
2229 First Avenue North
Birmingham, Alabama 35203
205.252.3535

16 **LAW OFFICE OF ANNA DEAN FARMER, P.C.**

17 Anna Dean Farmer (*pro hac* to be filed)
18 440 Louisiana, Suite 900
Houston, Texas. 77002
713.965.0095

19 **THE GILBERT LAW FIRM**

20 Christopher K. Gilbert (*pro hac* to be filed)
21 2223 Cheshire Lane
Houston, TX 77018
22 832.541.3747

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 827 Moraga Drive, Los Angeles, California 90049.

On November 18, 2008, I served the foregoing document described as **FIRST AMENDED CLASS ACTION COMPLAINT**, in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

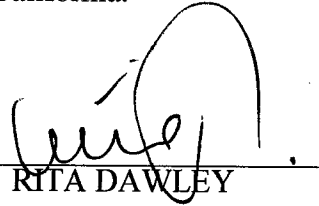
<p><u>By Electronic Mail & U.S. Mail</u></p> <p>Gail E. Lees, Esq. Christopher Chorba, Esq. Bryan E. Smith, Esq. GIBSON, DUNN & CRUTCHER LLP 333 South Grand Avenue Los Angeles, California 90071-3197 Tel.: (213) 229-7000 Facsimile: (213) 229-7520 glees@gibsondunn.com cchorba@gibsondunn.com bsmith@gibsondunn.com</p>	<p><u>By Electronic Mail</u></p> <p><u>Pro Hac Vice Application forthcoming</u> Joseph L. "Josh" Tucker, Esq. Edward E. Angwin, Esq. JACKSON, TUCKER & ANGWIN, P.C. 2229 1st Ave North Birmingham, AL 35203 Phone: 205-252-3535 Fax: 205-252-3536 josh@jacksonandtucker.com ed@jacksonandtucker.com</p> <p>Additional attorneys for Plaintiffs</p>
<p><u>By U.S. Mail</u></p> <p>Christopher K. Gilbert, Esq. THE GILBERT LAW FIRM 2223 Cheshire Lane Houston, Texas 77018 Telephone: 832-541-3747</p> <p>Additional attorneys for Plaintiffs</p>	<p><u>By U.S. Mail</u></p> <p>Anna Dean Farmer, Esq. LAW OFFICES OF ANNA DEAN FARMER, P.C. 440 Louisiana, Suite 900 Houston, Texas 77002 Telephone: 713-965-0095</p> <p>Additional attorneys for Plaintiffs</p>

X **BY E-MAIL (as noted above):** On November 18, 2008, I e-mailed the above document to the parties listed above, to their listed electronic addresses, which are their electronic addresses of record duly registered with the Court.

X **BY U.S. MAIL (as noted above):** On November 18, 2008, I caused such envelope to be deposited in the mail, with postage thereon fully prepaid, at Los Angeles, California. [I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in the affidavit.]

1 X **FEDERAL** I declare under penalty of perjury, under the laws of the laws of the United
2 States of America that the foregoing is true and correct. I further declare that I am employed in
3 the office of a member of the bar of the court at whose direction the service was made.

4 Executed this 18th of November, 2008, in Los Angeles, California.

5 
6
7 RITA DAWLEY
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28